

## INITIAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009 recognized and established Tribal Customary Adoption (TCA) as an additional permanent placement option for dependent Indian children. Many tribes do not favor traditional western adoption because tribal membership is based on ancestral connection to the tribe. They, therefore, established their own forms of adoption that vest all rights to care, custody, and control of a child into someone other than the birth parents without terminating parental rights of the birth parents. AB 1325 formally recognized these adoptions by adding them as permanency options for Indian children. In doing this, the bill authorized the California Department of Social Services (CDSS) to implement procedures for tribal customary adoption through All County Letters (ACL) or similar instruction from the director until regulations are adopted. The bill also authorized CDSS to establish emergency and final regulations for tribal customary adoption. These proposed regulations will be final and will incorporate the process of tribal customary adoption into the program regulations for Title 22, Division 2.

Section 35410(a)Specific Purpose:

This section adds the requirement that the placement agency consult with the Indian child's tribal representative prior to the selection and implementation of a permanent plan for the Indian child.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and Welfare & Institutions Code (WIC) section 351.8(j) requires consultation with an Indian child's tribe throughout the dependency proceedings to address the Indian child's permanency options, specifically TCA, for purposes of concurrent planning.

Section 35410(a)(1)Specific Purpose:

This section adds the requirement that the placement agency shall consult with the Indian child about the possibility of TCA as a permanent plan and that the tribal representative may, but not required to, provide written confirmation of the TCA.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 361.5(g)(1)(G) requires the placement agency to apprise the Indian child's tribal representative of all the permanency options under the law, including but not limited to TCA, and the financial benefits available to the child and his or her caretakers under each permanent plan.

Section 35410(a)(2)

Specific Purpose:

This section adds the requirement that the placement agency discuss with the Indian child's tribal representative the services the Indian child will need both before and after permanency is established by the court.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 361.5 require the placement agency to discuss with the Indian child's tribal representative all services available to the child and the child's permanent substitute care providers under each of the possible permanent plans, before and after the permanent plan is established.

Section 35410(a)(3)

Specific Purpose:

This section adds the requirement that the placement agency inform the Indian child's tribal representative that the tribe will have to identify TCA as a permanent plan before that plan can be ordered by the juvenile court. It requires the agency to advise the tribal representative that the tribe may, but is not required to, identify TCA in writing.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 351.8(j) require the placement agency to collaborate with the Indian child's tribe on implementation of permanency in general and TCA. Previously, existing law required the placing agency to engage in concurrent planning for permanency throughout the reunification period. Because the TCA order must be made by the tribe before TCA may be ordered as a final permanent plan by the juvenile court, the placement agency must inform the tribe of its responsibilities for implementing TCA for meaningful collaboration and concurrent planning.

#### Section 35410(b)

##### Specific Purpose:

This section adds the requirement that the placement agency documents that the Indian child's tribe identified TCA as the permanent plan prior to starting the written assessment of the child's likelihood and suitability for adoption.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 361.5(f) require documentation of the Indian child's tribe's position on permanency, specifically TCA, throughout the dependency case. This provision adds that requirement to the adoption regulations.

#### Section 35410(c)

##### Specific Purpose:

This section adds the requirement that the placement agency consult with the Indian child's tribe throughout the entire TCA process.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 361.5(g)(1) require consultation with the Indian child's tribe throughout the dependency proceeding. This provision adds that requirement to the adoption regulations.

#### Section 35410(d)

##### Specific Purpose:

This section adds the requirement that nothing in the proceedings supersedes other tribal customary adoption procedures already in place.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 requires consultation with the Indian child's tribe throughout the dependency proceeding. On November 9, 2017, at CDSS' Office of Tribal Affairs' Indian Child Welfare Act (ICWA) TCA Consultation, a tribal representative requested this language to clarify that these TCA regulations will not jeopardize TCA orders already in place.

#### Section 35411(a) through (a)(1)(b)

##### Specific Purpose:

This section adds the requirement that the placement agency's conduct a written assessment for tribal customary adoption.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009 which was implemented by ACL 10-47. AB 1325 and WIC sections 361.5(g)(1), 366.21(i)(1), 366.22(c)(1), 366.25(b)(1), and 366.26(c)(1) require the placement agency to provide a written assessment for tribal customary adoptions in accordance with WIC section 366.24.

#### Section 35411(a)(1) through (a)(2)(A)

##### Specific Purpose:

This section adds the requirement that the placement agency's written assessment include identifying information regarding the Indian child's tribal membership/affiliation, and any siblings or extended family members and their tribal membership/affiliation.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the placement agency to address the Indian child's membership and/or affiliation with his/her tribe and the Indian child's relationships with members of his/her tribe, siblings, and other extended family members.

#### Section 35411(a)(2)

##### Specific Purpose:

This section adds the requirement that the placement agency's written assessment include an assessment of the Indian child's ready and willingness to be adopted. It also requires the assessment to include the Indian child's statement regarding the Indian child's wishes.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. Section 35093 and Family Code (FC) sections 8806, 8807, and 8817 required the assessment to address any child's readiness for adoption and willingness to be adopted. AB 1325 and WIC sections 361.5 (g)(1)(G), 366.21(i)(1)(H), 366.22(c)(1)(G), and 366.25(b)(1)(G)

extended this requirement to assessments for purposes of TCA, in accordance with WIC section 366.24. This provision reflects this extension. In addition, the Bureau of Indian Affairs' "November 26, 1979 Guidelines for State Courts; Indian Child Custody Proceedings, Guideline F-3" recognizes the requests of a child of sufficient age are important in making an effective placement and the California Judicial Council Advisory Committee concluded, "that while the consent of a child over the age of 12 is not required for a tribal customary adoption, the wishes of a child are still an important and appropriate factor for the court to consider when determining whether tribal customary adoption is the appropriate permanent plan for an Indian child."

#### Section 35411(a)(3)

##### Specific Purpose:

This section adds the requirement that the placement agency's written assessment includes an analysis of the likelihood that the Indian child will be adopted through the TCA process and whether a potential adoptive family has been identified.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. Section 35093 and FC sections 8806, 8807, and 8817 required the agency to assess a child's likelihood for traditional adoption and whether a prospective adoptive family had been identified. AB 1325 and WIC sections 361.5 (g)(1)(G), 366.21(i)(1)(H), 366.22(c)(1)(G), and 366.25(b)(1)(G) extended this requirement to include an assessment of the likelihood that the child would be adopted through TCA and the existence of a prospective adoptive family through the TCA process in accordance with WIC section 366.24. This provision reflects this extension.

#### Section 35411(a)(4)

##### Specific Purpose:

This section adds the requirement that the placement agency's written assessment include the results of the psychological evaluation, if one exists.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC sections 361.5(g)(1), 366.21(i)(1), 366.22(c)(1), 366.25(b)(1), and 366.26(c)(1) require the assessment of the child to include in the report all diagnostic information, including any psychological evaluations of the Indian child in accordance with WIC section 366.24.

#### Section 35411(a)(4)(A)(1)

##### Specific Purpose:

This section adds the requirement that the placement agency obtain the results of the psychological evaluation for a child that is five years and older when the agency's review of the child's history identifies a genetic predisposition for mental illness.

##### Factual Basis:

WIC section 366.24(c)(9)(B) and FC section 8600.5 require the placement agency to obtain psychological evaluation results for a child that is five years and older when a genetic predisposition for mental illness is identified in the child's history. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

#### Section 35411(a)(4)(A)(2)

##### Specific Purpose:

This section adds the requirement that the placement agency obtain the results of the psychological evaluation for a child that is five years and older when the agency's review of the child's behavior seems abnormal and symptomatic of mental illness.

##### Factual Basis:

WIC section 366.24(c)(9)(B) and FC section 8600.5 require the placement agency to obtain psychological evaluation results for a child that is five years and older when a child's behavior seems abnormal and symptomatic of mental illness. This provision reflects this extension to the TCA process, in accordance with WIC section 366.24.

#### Sections 35411(a)(4)(A)(2)(a-n)

##### Specific Purpose:

This section adds requirement that the agency's review include the Indian child's abnormal and symptomatic behaviors, which includes: pervasive lack of response, solitary and repetitive play, speech patterns, extreme need for sameness, attachment to inanimate objects, retreat into fantasy, bizarre gestures or mannerisms, extreme aggression, uncontrollability when separated from parental figures, slow thinking, suicidal thoughts, bizarre eating habits, incoherence, hallucinations, odd motor development, excessive anxiety and worry, and hyperactivity.

Factual Basis:

WIC section 366.24(c)(9)(B) and FC section 8600.5 require the placement agency's review include the child's abnormal and symptomatic behaviors in the assessment. This provision reflects this extension to the TCA process.

Section 35411(a)(4)(B)(1)

Specific Purpose:

This section adds the requirement that the when an Indian child who is five years or older is not displaying abnormal and/or symptomatic behaviors mentioned in Section 35411(a)(4)(A)(2), the placement agency shall determine if a psychological evaluation is necessary based on information about the Indian child and parent(s).

Factual Basis:

WIC section 366.24(c)(9)(B) and FC section 8600.5 require the placement agency determine if a psychological evaluation is necessary based on the child and his/her parent when the child is five years or older and is not displaying abnormal or symptomatic behaviors. This provision reflects this extension to the TCA process.

Section 35411(a)(4)(B)(2)

Specific Purpose:

This section requires that if the placement agency determines a psychological evaluation is necessary for an Indian child that is five years or older who is not displaying abnormal and/or symptomatic behaviors, as described in Section 35411(a)(4)(A)(2), the placement agency arrange and obtain the results of the evaluation.

Factual Basis:

FC section 8600.5 require the placement agency to determine whether a psychological evaluation is necessary for a child that is five years or older who is not displaying abnormal behaviors and arrange and obtain the results of the evaluation. This provision reflects this extension to the TCA process in accordance with WIC section 366.24(c)(9)(B).

Section 35411(a)(4)(B)(3) through (a)(4)(B)(3)(a-c)

Specific Purpose:

This section adds the requirement that the information obtained to indicate a psychological evaluation may include, but is not limited to, a birth parent's history of mental illness, the birth mother's use of drugs and/or alcohol during pregnancy, and the Indian's child history of physical, sexual, or emotional abuse.

Factual Basis:

FC section 8600.5 requires the information obtained to indicate that a psychological evaluation may include, but is not limited to, a birth parent's history of mental illness, the birth mother's use of drugs and/or alcohol during pregnancy, and the Indian's child history of physical, sexual, or emotional abuse. This provision reflects this extension to the TCA process in accordance with WIC section 366.24(c)(9)(B).

Section 35412(a) through (a)(1)

Specific Purpose:

This section adds the requirement that the placement agency obtain confirmation from the Indian child's tribe whether it will pursue TCA, conducts its own home study, or select a designee to conduct the home study.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the Indian child's tribe or tribal designee to conduct the home study prior to the final approval of TCA placement.

Section 35412(a)(2)

Specific Purpose:

This section adds the requirement that the placement agency obtain a certified copy of the Indian child's birth certificate.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain a certified copy of the child's birth certificate. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(3)

Specific Purpose:

This section adds the requirement that the placement agency obtain complete information regarding the Indian child's legal status.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC sections 8619 and 8706 require the placement agency obtains complete information regarding the Indian child's legal status. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(4)

Specific Purpose:

This section adds the requirement that the placement agency obtain all the Indian child's dependency court reports.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain all the child's dependency court reports. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(5) through (a)(5)(A)

Specific Purpose:

This section adds the requirement that the placement agency obtain medical reports that contain sufficient information in compliance with FC section 8706.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain medical reports that contain sufficient information. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(6)

Specific Purpose:

This section adds the requirement that the placement agency obtain dental reports, if any.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain dental reports, if any. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(7) through (a)(7)(E)

Specific Purpose:

This section adds the requirement that the placement agency obtain authorizations for the release of medical, dental, scholastic, and psychological information of the Indian child, if any, and medical, psychological, and social information about the Indian child's birth parents.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain authorizations for the release of medical, dental, scholastic, and psychological information of the Indian child, if any, and medical, psychological, and social information about the child's birth parents. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35412(a)(8)

Specific Purpose:

This section adds the requirement that the placement agency obtain authorization for the Indian child's medical care.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. FC section 8706 requires the placement agency obtain authorization for the child's medical care. AB 1325 extended this requirement to assessments for purposes of TCA in accordance with WIC section 366.24(c)(9)(B). This provision reflects this extension.

Section 35413(a)(1) through (a)(1)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to provide preventative and remedial medical care services.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the placement agency collaborate with the Indian child's tribe throughout the entire TCA process to provide preventative and remedial medical care services pursuant to FC section 8706.

Section 35413(a)(2)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to obtain the Indian child's medical background and reports.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the placement agency collaborate with the Indian child's tribe throughout the TCA process to obtain the child's medical background and reports pursuant to FC section 8706.

Section 35413(a)(3)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to provide services to emotionally prepare the Indian child for the adoption, which includes loss and separation.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 366.24 require the placement agency collaborate with the Indian child's tribe throughout the entire TCA process to provide services to emotionally prepare the Indian child for the adoption, which includes loss and separation pursuant to FC section 8706.

Section 35413(a)(4)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to provide services pertaining the supervision of the adoptive placement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 366.24(c)(8) require the placement agency collaborate with the Indian child's tribe throughout the entire TCA process to provide services pertaining the supervision of the adoptive placement pursuant to FC section 8706.

Section 35413(a)(5)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to prepare and complete the Adoption Placement Agreement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 16120 requires the placement agency collaborate with the Indian child's tribe throughout the entire TCA process to prepare and complete the Adoption Placement Agreement.

Section 35413(a)(6)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to prepare and complete the Adoption Assistance Agreement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 16120 require the placement agency collaborate with the Indian child's tribe throughout the entire TCA process to prepare and complete the Adoption Assistance Agreement.

Section 35413(a)(7)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to determine the Adoption Assistance Program (AAP) payment level.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 16120 require the placement agency collaborate with the Indian child's tribe throughout the TCA process to determine the AAP payment level.

Section 35413(a)(8)

Specific Purpose:

This section adds the requirement that the placement agency collaborate with the Indian child's tribe to recertify the Adoption Assistance Agreement when needed.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 16120 require the placement agency collaborate with the Indian child's tribe throughout the TCA process to recertify the Adoption Assistance Agreement when needed.

Section 35414(a)

Specific Purpose:

This section adds the requirement that the placement agency receive a written application for TCA before it assesses the applicant.

Factual Basis:

FC section 8621 and Section 35177 require the placement agency receive a written application before it assesses the applicant. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

Section 35414(b)

Specific Purpose:

This section adds the requirement that the placement agency provide the adoptive applicant with information specified in Sections 35179 and 35179.1.

Factual Basis:

FC section 8621 requires the placement agency provide the adoptive applicant with information specified in Sections 35179 and 35179.1. This provision reflects this extension to the TCA process and is required by WIC section 366.24(c)(9).

#### Section 35414(c)

##### Specific Purpose:

This section adds the requirement that the placement agency assess each adoptive applicant as specified in Sections 35181 or 35183.

##### Factual Basis:

FC section 8621 require the placement agency assess each adoptive applicant as specified in Sections 35181 or 35183. This provision reflects this extension to the TCA process and is required by WIC section 366.24(c)(9).

#### Section 35414(c)(1)

##### Specific Purpose:

This section adds the requirement that the placement agency may give priority consideration to applicants specifying characteristics that are like the Indian child up for placement.

##### Factual Basis:

FC section 8621 requires the placement agency give priority consideration to applicants specifying characteristics that are similar to the Indian child up for placement. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

#### Section 35414(c)(2) through (c)(2)(B)

##### Specific Purpose:

This section adds the requirement that the placement agency provide the applicant with other assessment agencies in the area and inform the applicant of federal income tax if the anticipated waiting time before the agency conducts the assessment is more than six months.

##### Factual Basis:

FC section 8621 requires the placement agency provide the applicant with other assessment agencies in the area and inform the applicant of federal income tax if the anticipated waiting time before the agency conducts the assessment is more than six months. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

#### Section 35414(d)

##### Specific Purpose:

This section adds the requirement that the placement agency provide the applicant with written information about the AAP.

##### Factual Basis:

WIC section 16120 requires the placement agency provide the applicant with written information about the AAP. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

#### Handbook Section 35414

##### Specific Purpose:

This section references the publication used to inform the applicant of the AAP.

##### Factual Basis:

WIC section 16120 requires this publication be used to inform the applicant of the AAP. This provision reflects this extension to the TCA process in accordance with WIC section 366.24.

#### Section 35414(e)

##### Specific Purpose:

This section adds the requirement that the Indian child's tribe shall make the final determination regarding the placement.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1324 and WIC section 366.24(c)(8) require the Indian's child's tribe to make the final approval or disapproval of the TCA.

#### Section 35415(a)

##### Specific Purpose:

This section adds the requirement that the tribe, or tribe's designee, may perform the TCA home study.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1) may require the Indian child's tribe or tribal designee to conduct the home study for TCA placement.

Section 35415(b)

Specific Purpose:

This section adds the requirement that the tribe's designee perform the TCA home study in consultation with the Indian child's tribe.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1)(A) require the tribe's designee perform the TCA home study in consultation with the Indian child's tribe.

Sections 35415(c) through (d)

Specific Purpose:

This section adds the requirement that the tribal customary adoption home study may be bypassed if the home was approved through the Resource Family Approval (RFA) process. However, it ultimately allows the tribe to decide if it wants to pursue a home study through the TCA process. In addition, this section clarifies that a tribally-approved home must also conduct a home study for TCA purposes.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, WIC sections 366(a)(1)(B) and 16519.5, and Public Law (PL) 105-89 and 106-169. WIC section 16519.5 requires CDSS to utilize the RFA process to approve relatives and extended family members as foster care providers and approve adoptive families, while WIC section 364.24 requires that the home study be conducted by the tribe or tribal designee. Ultimately, the Indian child's tribe has the final approval of the home study for TCA. WIC section 366(a)(1)(B) requires that concurrent planning take place at the status review hearing if reunification efforts fail. The Adoption and Safe Families Act of 1997 (PL 105-89) mandated shorter timelines for achieving permanency for children in foster care and The Foster Care Independence Act of 1999 (PL 106-169) expanded concurrent planning beyond very young children.

#### Section 35415(e)

##### Specific Purpose:

This section adds the requirement that the tribe may perform the background checks for TCA purposes.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009. AB 1325 and WIC section 366.24(c) permits the Indian child's tribe, if federal recognized, with capability to perform background checks for TCA purposes.

#### Section 35415(f)

##### Specific Purpose:

This section adds the requirement that the section titled "Tribal Designee Conducts the Home Study" does not apply to tribe's performing their own home study.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 allow the Indian child's tribe to conduct its own home study according to its own customs, traditions, and laws.

#### Handbook Section 35415

##### Specific Purpose:

This section references Penal Code (PC) section 11105.08(g), WIC section 336.24(3)(c), and WIC section 366.26(c)(4).

##### Factual Basis:

This amendment is necessary to reference existing statute regarding the background check process for TCA.

#### Section 35416(a)

##### Specific Purpose:

This section adds the requirement that the placement agency begin the TCA home study once the Indian child's tribe designates the agency.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1) require the Indian child's tribe or tribal designee to conduct the home study prior to the final approval of TCA placement.

Section 35416(b)

Specific Purpose:

This section adds the requirement that Indian child's tribe designate a licensed county adoption agency, CDSS, when acting as an adoption agency, or a California licensed adoption agency.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1)(A) require the Indian child's tribe designate a licensed county adoption agency, CDSS acting as an adoption agency, or a California licensed adoption agency.

Section 35417(a) through (a)(1)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible for consulting and collaborating with the Indian child's tribe.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and Section 366.24(c)(1)(A) require the tribal designee to consult with the Indian child's tribe throughout the TCA process.

Section 35417(a)(2)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible completing the TCA home study using the Indian child's tribe social and cultural standards.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1)(B) require the tribal designee be responsible in completing the TCA home study using the Indian child's tribe social and cultural standards.

Section 35417(a)(3)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible for recommending approval or denial of the adoptive applicant.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c) require the tribal designee be responsible recommend approval or denial of the adoptive applicant.

Section 35417(a)(4)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible for performing state and federal background checks on the adoptive applicant and all other adults living in the home.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(1)(B)(2) require the tribal designee be responsible for performing state and federal background checks the adoptive applicant and all other adults living in the home.

Section 35417(a)(5)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible for performing out-of-state background checks for the adoptive applicant and all other adults that live in the home if they lived in another state within the last five years.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c) require the tribal designee to be responsible for performing out-of-state background checks for the adoptive applicant and all other adults that live in the home if they lived in another state within the last five years.

Section 35417(a)(6)

Specific Purpose:

This section adds the requirement that the tribal designee is responsible for providing a written summary of the criminal history to the Indian child's tribe.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c) require the tribal designee to perform background checks for the adoptive applicant and require the Indian child's tribe to approve or disapprove the applicant bases on the assessment. The requirement to provide a written summary is necessary because PC sections 11076 and 11142 prohibit agencies from disseminating the criminal offended record information to unauthorized agencies.

Section 35417(b) through (b)(1)

Specific Purpose:

This section adds the requirement that the tribal designee may also be responsible for supervision of the placement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) stage that the tribal designee may also be responsible for supervision of the placement.

Section 35417(b)(2)

Specific Purpose:

This section adds the requirement that the tribal designee may also be responsible for termination of the placement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) state that the tribal designee may also be responsible for termination of the placement.

Section 35417(b)(3)

Specific Purpose:

This section adds the requirement that the tribal designee may also be responsible for completing the final court report.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(12) state that the tribal designee may also be responsible for completing the final court report.

Section 35417(b)(4)

Specific Purpose:

This section adds the requirement that the tribal designee may also be responsible for the immediate filing of the final court report.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(12) state that the tribal designee may also be responsible for the immediate filing of the final court report.

Section 35418(a)

Specific Purpose:

This section adds the requirement that the placement agency receive the Indian child's tribe's designation prior to accepting the application to adopt and home study.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)

require the Indian child's tribe or tribal designee to conduct the home study prior to the final approval of TCA placement.

#### Section 35418(b)

##### Specific Purpose:

This section adds the requirement that in addition to Sections 35180 through 35184, the Indian child's tribe's designee is required to perform the TCA home study using the tribe's prevailing social and cultural standard.

##### Factual Basis:

WIC sections 361.5(g)(1), 366.21(i)(1), 366.22(c)(1), 366.25(b)(1), and 366.26(c)(1) require the agency to perform adoptive assessments in Sections 35180 through 35184. This provision reflects this extension. AB 1325 and WIC section 366.24(c) extend this requirement for the tribe's designee to perform the home study using the tribe's prevailing social and cultural standard. This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47.

#### Section 35418(b)(1)

##### Specific Purpose:

This section adds the requirement the Indian child's tribe's designee shall include information about the prospective adoptive parent's tribal affiliation or membership.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c) require the tribe's designee to include information about the prospective adoptive parent's tribal affiliation or membership.

#### Section 35418(b)(2)

##### Specific Purpose:

This section adds the requirement that the Indian child's tribe's designee shall include a determination of the prospective adoptive parent's commitment and ability to allow the Indian child to participate in tribe traditions such as ceremonial events.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and 366.24(c) require the tribe's designee to include a determination of the prospective adoptive parent's

commitment and ability to allow the Indian child to participate in tribe traditions such as ceremonial events.

#### Section 35418(c)

##### Specific Purpose:

This section adds the requirement that the Indian child's tribe's designee shall make a recommendation of approval or disapproval of the prospective adoptive parents.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the Indian child's tribe's designee to make a recommendation of approval or disapproval of the prospective adoptive parents.

#### Section 35418(d) through (d)(1)

##### Specific Purpose:

This section adds the requirement that the placement agency shall not approve an application until the tribal designee consults with the tribe, in addition to the other requirements, as specified in Section 35177(f).

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the placement agency to consult with the Indian child's tribe throughout the entire TCA process, which includes not approving an application or any other requirements as described in Section 35177(f), until the tribal designee consults with the tribe.

#### Section 35418(e) through (e)(1)

##### Specific Purpose:

This section adds the requirement that the placement agency provide the applicant with written notification of the tribal designee's recommendation to approve or disapprove the placement, in addition to the requirements specified in Section 35177(g).

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24

require the placement agency provide the applicant with written notification of the tribal designee's recommendation to approve or disapprove the placement. In addition, other written notifications identified in Section 35177(g) are required by FC section 8608.

#### Section 35419(a)

##### Specific Purpose:

This section adds the requirement that the Indian child's tribe prepare the Tribal Customary Adoption Order (TCAO) in accordance with its customs and traditions, but is not required to disclose its customs and traditions.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24 require the Indian child's tribe prepare the TCAO in accordance with its customs and traditions, but is not required to disclose its customs and traditions. On November 9, 2017, at the CDSS Office of Tribal Affairs' ICWA TCA Consultation, a tribal representative requested this language to clarify that these TCA regulations will not require the Indian child's tribe to disclose its customs and traditions.

#### Section 35419(b) through (b)(1)

##### Specific Purpose:

This section adds the requirement that the Indian child's tribe identify the form or format of the TCAO, which shall address the modification of the legal relationship of birth parents, the Indian custodian, and the Indian child.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the Indian child's tribe to identify the form or format of the TCAO, which shall address the modification of the legal relationship of birth parents, the Indian custodian, and the Indian child.

#### Section 35419(b)(2)

##### Specific Purpose:

This section adds the requirement that TCAO address the contact between the birth parents and the Indian custodian, if any.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the TCAO address the contact between the birth parents and the Indian custodian, if any.

Section 35419(b)(3)

Specific Purpose:

This section adds the requirement that TCAO address the responsibilities of the birth parents and the Indian custodians.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the TCAO address the responsibilities of the birth parents and the Indian custodians.

Section 35419(b)(4)

Specific Purpose:

This section adds the requirement that TCAO address the Indian child's legal relationship to the tribe.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the TCAO address the Indian child's legal relationship to the tribe.

Section 35419(b)(5)

Specific Purpose:

This section adds the requirement that TCAO address the rights of inheritance of the Indian child.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the TCAO address the rights of inheritance of the Indian child.

## Handbook Section

### Specific Purpose:

This section references the WIC section 366.24(11) which states that the birth parents consent is not required to initiate the permanent plan of TCA.

### Factual Basis:

This section is added to reference the law stating the birth parents' consent is not required to initiate the permanent plan of TCA.

## Section 35419(c)

### Specific Purpose:

This section adds the requirement that the TCAO not include any child support orders of the birth parents or the Indian custodian.

### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require the TCAO not include any child support orders of the birth parents or the Indian custodian.

## Section 35419(d)

### Specific Purpose:

This section adds the requirement that any parental rights or obligations not in the TCAO be vested on the tribal customary adoptive parents.

### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(10) require that any parental rights or obligations not in the TCAO be vested to the tribal customary adoptive parents.

## Section 35420(a)

### Specific Purpose:

This section requires that the Indian child's tribe provides a copy of the TCAO to the agency and file it with the juvenile court 20 days prior to the 366.26 hearing or 20 days prior to continued 366.26 hearing.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(6) require the Indian child's tribe provide the agency with a copy of the TCAO and file it with the court.

Section 35420(b)

Specific Purpose:

This section adds the requirement that the placement agency provide the TCAO to the prospective adoptive parents.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(6) require the placement agency provide the TCAO to the applicant.

Section 35420(c)

Specific Purpose:

This section adds the requirement that the placement agency file the addendum report with the court seven day prior to the continued 366.26 hearing(s), which are required by WIC section 366.26 that terminates parental rights or establishes guardianship of children adjudged dependents.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(6) require that the placement agency file the addendum report with the court seven day prior to the hearing.

Section 35421(a)

Specific Purpose:

This section adds the requirement that the Indian child is eligible for placement once the court affords full faith and credit to the TCAO and the Indian child's tribe approves the home study.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the Indian child be eligible for placement once the court affords full faith and credit to the TCAO and the Indian child's tribe approves the home study.

Section 35421(b)

Specific Purpose:

This section adds the requirement that the agency with care and placement responsibility make the TCA placement and sign the TCA agreement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency with care and placement responsibility make the TCA placement and sign the TCA agreement.

Section 35421(c)

Specific Purpose:

This section adds the requirement that the agency sign the adoption assistance agreement and the prospective adoptive parent(s) may file the petition for adoption.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency sign the adoption assistance agreement and the prospective adoptive parent(s) may file the petition for adoption.

Section 35421(d) through (d)(1)

Specific Purpose:

This section adds the requirement that the agency does not have to supervise the adoptive placement for six months when the prospective adoptive parent(s) have an approved assessment and successful adoption in California within the past five years.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency does not have to supervise the adoptive placement for six months when the prospective adoptive parent(s) have an approved assessment and successful adoption in California within the past five years.

Section 35421(d)(2)

Specific Purpose:

This section adds the requirement that the agency does not have to supervise the adoptive placement for six months when the prospective adoptive parent is commissioned or enlisted in the military service, an auxiliary of the United States, engaged in service on behalf of any U.S. government, or employed by American Red Cross or any other recognized charitable organization wherever the completion of the six-month supervisory period would delay the completion of adoption.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency does not have to supervise the adoptive placement for six months when the prospective adoptive parent is commissioned or enlisted in the military service, an auxiliary of the United States, engaged in service, or employed by American Red Cross or any other recognized charitable organization whenever the completion of the six-month supervisory period would delay the completion of adoption.

Section 35421(d)(3)

Specific Purpose:

This section adds the requirement that the agency supervise the adoptive placement for a month, each full month that the Indian child was placed in foster care with the prospective adoptive parent in which the placement was supervised by the agency before signing the adoptive placement agreement.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency supervise the adoptive placement for a month, each full month that the Indian child was placed in foster care with the prospective adoptive parent in which the placement was supervised by the agency before signing the adoptive placement agreement.

#### Section 35421(d)(4)

##### Specific Purpose:

This section adds the requirement that the agency supervise the adoptive placement for a month, each full month that the Indian child was placed in foster care with a relative (or relative of the child's half sibling) who is the prospective adoptive parent and the placement was supervised by the agency before signing the adoptive placement agreement.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency supervise the adoptive placement for a month, each full month that the Indian child who has been in the foster care with a relative, when the Indian child is to be adopted by a relative or a relative of the Indian child's half sibling whose foster care placement has been supervised by the agency before signing the adoptive placement agreement.

#### Section 35421(d)(5)

##### Specific Purpose:

This section adds the requirement that the agency does not have to supervise the adoptive placement for six months when the Indian child is to be adopted by a relative and has established a relationship.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(8) require the agency does not have to supervise the adoptive placement for six months when the Indian child is to be adopted by a relative and have established a relationship.

#### Section 35422(a)

##### Specific Purpose:

This section adds the requirement that the agency with responsibility of the Indian child submit the final court report to the court in accordance with Section 35211(d).

Factual Basis:

FC section 8715 requires the agency with responsibility over the child to submit the final court report in Section 35211(d). AB 1325 and WIC section 366.24(c)(12) extended this requirement to assessments for purposes of TCA. This provision reflects this extension. This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47.

Section 35422(a)(1)

Specific Purpose:

This section adds the requirement that the final court report include a copy of the executed TCAO.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(12) require the final court report include, but is not limited to, a copy of the executed TCAO.

Section 35422(a)(2)

Specific Purpose:

This section adds the requirement that the final court report include the birth parents medical and family background information in accordance with section 35195(a).

Factual Basis:

Section 35211 requires the final court report include the birth parents medical and family background information in accordance with FC section 8715. AB 1325 and WIC section 366.24(c)(12) extended this requirement to assessments for purposes of TCA. This provision reflects this extension.

Section 35422(a)(3)

Specific Purpose:

This section adds the requirement that the final court report include information from the child's assessment in accordance with Section 35127.1.

Factual Basis:

Section 35211 requires the final court report include information from the child's assessment in accordance with FC section 8715. AB 1325 and WIC section

366.24(c)(12) extended this requirement to assessments for purposes of TCA. This provision reflects this extension.

Section 35422(a)(4)

Specific Purpose:

This section adds the requirement that the final court report include information from the applicant's assessment, in accordance with Section 35180.

Factual Basis:

Section 35211 requires the final court report include information from the applicant's assessment in accordance with FC section 8715. AB 1325 and WIC section 366.24(c)(12) extended this requirement to assessments for purposes of TCA. This provision reflects this extension.

Section 35422(a)(5) through (a)(5)(1)

Specific Purpose:

This section adds the requirement that the final court report include the applicant's most current criminal background information assessments or conclusions drawn from the applicant criminal background in regards to their ability to care for the Indian child and provide a safe and stable home.

Factual Basis:

Section 35211 requires the final court report include but is not limited to the applicant's most current criminal background information assessments or conclusions drawn from the applicant criminal background regarding their ability to care for the Indian child and provide a safe and stable home in accordance with FC section 8715. AB 1325 and WIC section 366.24(c)(12) extended this requirement to assessments for purposes of TCA. This provision reflects this extension.

Section 35422(b)

Specific Purpose:

This section adds the requirement that the agency shall notice the Indian child's tribe of the final hearing.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 294 require the agency to notify the Indian child's tribe of the parties on the case.

#### Section 35423(a) through (a)(1)

##### Specific Purpose:

This section adds the requirement that the adoptive parents may petition the court to set aside the TCA within five years of issuance of the TCAO when the Indian child has disability or mental illness that existed prior to the TCA because the Indian child is unadoptable.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) require that the adoptive parents may petition the court to set aside the TCA within five years of issuance of the TCAO when the Indian child has disability or mental illness that existed prior to the TCA because the Indian child is unadoptable in accordance with Family Code (FC) sections 9100 and 9102.

#### Section 35423(a)(2)

##### Specific Purpose:

This section adds the requirement that the adoptive parents may petition the court to set aside the TCA within five years of issuance of the TCAO when the Indian child has disability or mental illness that the adoptive parents did not know about prior to the initiation of TCA.

##### Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) require that the adoptive parents may petition the court to set aside the TCA within five years of issuance of the TCAO when the Indian child has disability or mental illness that the adoptive parents did not know about prior to the initiation of TCA in accordance with FC sections 9100 and 9102.

#### Section 35423(b)

##### Specific Purpose:

This section specifies that CDSS shall notify the tribe as soon as CDSS has received notice that a side aside petition was filed.

Factual Basis:

ICWA (25 USC §1901 et seq.) requires the county agency comply with active efforts and placement requirements. This provision reflects this extension to set asides for the TCA process in accordance with WIC section 366.24 and requires CDSS to notify the tribe as soon as set aside is determined to proceed with the set aside process.

Section 35423(c)

Specific Purpose:

This section adds the requirement that while the set aside petition is pending the county agency may comply with active efforts and placement requirements pursuant to ICWA.

Factual Basis:

ICWA (25 USC §1901 et seq.) requires the county agency comply with active efforts and placement requirements. This provision reflects this extension to set aside for the TCA process.

Section 35423(d)

Specific Purpose:

This section adds the requirement that the agency file a full report to the court to set aside the TCA.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) require the agency file a full report to the court to set aside the TCA in accordance with FC sections 9100 and 9102.

Section 35423(d)(1-3)

Specific Purpose:

This section adds the requirement that the full report include facts alleged in the set aside are valid and true, active efforts made to prevent the breakup of the Indian family, and the new disposition of the Indian child including, but not limited to, the agency's compliance with the requirements under ICWA.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) extended the set aside requirements of FC sections 9100 and 9102 to TCA, which require the full report include facts alleged in the set aside are valid and true and include active efforts and the new disposition of the Indian child.

Section 35423(e)

Specific Purpose:

This section adds the requirement that the agency appear in court to represent the Indian child to set aside the TCA.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) require the agency appear in court to represent the Indian child to set aside the TCA, in accordance with FC sections 9100 and 9102.

Section 35423(f)

Specific Purpose:

This section adds the requirement that the Indian child be returned to the county in which the TCA proceeding took place once the final decree to set aside TCA is issued and that the disposition include consultation with the child's tribe.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.26(e)(3) require the Indian child be returned to the county in which the TCA proceeding took place once the final decree to set aside TCA is issued, and that the disposition include consultation with the child's tribe, in accordance with FC sections 9100 and 9102.

Section 35423(g)

Specific Purpose:

This section adds the requirement that the agency with placement of the Indian child applies all the ICWA requirements to all subsequent proceedings and supervision of the child after the set aside of the TCA petition is granted.

Factual Basis:

ICWA (25 USC §1901 et seq.) requires the agency with placement of the Indian child apply all the requirements to all subsequent proceedings and supervision of the child after the set aside TCA petition is granted.

Section 35424(a)

Specific Purpose:

This section requires that a placement agency may place an Indian child outside of the state for TCA purposes.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.25(a)(2) state that a placement agency may place an Indian child outside of the state for TCA purposes.

Section 35424(b)

Specific Purpose:

This section adds the requirement that the TCA be finalized in the juvenile court in which the Indian child is a dependent.

Factual Basis:

This amendment is necessary to comply with AB 1325, Chapter 287, Statutes of 2009, which was implemented by ACL 10-47. AB 1325 and WIC section 366.24(c)(12) require the court finalize the TCA and determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

b) Identification of Documents Upon Which Department Is Relying

ACL 10-47 and AB 1325, Chapter 287, Statutes of 2009

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS considered the following alternatives with the following results: no other alternatives exist as ACL 10-47 was published in October of 2010 to implement this legislation.

CDSS made an initial determination that the implementation of this legislation through ACL 10-46 would not be more effective in carrying out the purpose for which the regulations are proposed. These proposed regulations bring Title 22, Division 2 into compliance with state statute and provides consistent guidance for the process of TCA.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that these regulations will only impact child placement agencies.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**Creation or Elimination of Jobs Within the State of California**

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California. This determination was made based on the fact that these regulations will only impact child placement agencies.

**Creation of New or Elimination of Existing Businesses Within the State of California**

The adoption of the proposed regulations will neither result in the creation of new businesses nor elimination of existing businesses in the State of California. This determination was made based on the fact that these regulations will only impact child placement agencies.

**Expansion of Businesses Within the State of California**

The adoption of the proposed regulations will not result in the expansion of businesses in the State of California. This determination was made based on the fact that these regulations will only impact child placement agencies.

### **Benefits of the Regulations**

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment allow for dependent Indian children to be offered permanence through customary tribal adoption practices without terminating parental rights. Termination of parental rights conflict with many tribal teachings, cultural values and severs tribal connection. It is in the interest of Indian children to have their tribal membership and connection to tribal community protected. Additionally, dependent Indian children, through tribal customary adoption, will be eligible for benefits from the AAP.

### **Documents Relied Upon**

ACL 10-47 and AB 1325, Chapter 287, Statutes of 2009

#### **g) Benefits Anticipated from Regulatory Action**

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment will allow for dependent Indian children to be offered permanence through customary tribal adoption practices without terminating parental rights. Termination of parental rights conflict with many tribal teachings, cultural values and severs tribal connection. It is in the interest of Indian children to have their tribal membership and connection to tribal community protected. Additionally, dependent Indian children, through tribal customary adoption, will be eligible for benefits from the AAP. In addition, these proposed regulations bring Title 22, Division 2 into compliance with state statute and provides consistent guidance for the process of TCA.

#### **h) Statement of Specific Technology or Equipment**

This regulatory action will not mandate the use of new, specific technologies or equipment.